

# Calendar No. 1068

91ST CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 91-1063

## T. SGT. PETER ELIAS GIANUTSOS, U.S. AIR FORCE (RETIRED)

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JULY 30, 1970.—Ordered to be printed

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Mr. BURDICK, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany H.R. 11890]

The Committee on the Judiciary, to which was referred the bill (H.R. 11890) for the relief of T. Sgt. Peter Elias Gianutsos, U.S. Air Force (retired), having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to relieve T. Sgt. Peter Elias Gianutsos, U.S. Air Force (retired) of liability to the United States in the amount of \$390.65, representing overpayments of active duty pay and leave allowances as a member of the Air Force from 1951 through 1964.

#### STATEMENT

The House of Representatives in its favorable report on H.R. 11890 relates the following:

The Air Force in its report to the committee on the bill indicated that it would have no objection to enactment of the bill if the bill were amended to provide for relief in the amount of \$390.65. The General Accounting Office in its report questioned relief in this instance and indicated its opposition to the bill.

Sergeant Gianutsos served as an enlisted member in the Army from June 15, 1942, through October 7, 1948. He en-

listed in the Air Force October 24, 1951, and served on continuous active duty until his retirement April 30, 1966. On retirement he had 20 years, 2 months, and 24 days of creditable service for pay purposes. He is currently entitled to retired pay at the rate of \$194.75 a month.

Early in 1965 Sergeant Gianutsos volunteered for duty in South Vietnam. During this tour of duty, on October 23, 1965, he extended his enlistment for 6 months. At that time, records available at his duty station indicated he had taken more leave than he had earned during the October 1961 to October 1965 enlistment. However, since the records were incomplete, collection for the excess leave was not effected.

Sergeant Gianutsos was retired from the Air Force at Travis Air Force Base, Calif. Immediately prior to his retirement, he applied at Travis Air Force Base for pay and allowances due him for April 1966. Records available at Travis Air Force Base also showed he had taken more leave than he had earned during his October 1961 to October 1965 enlistment. Sergeant Gianutsos did not agree with this determination and because Travis Air Force Base did not have sufficient information to resolve the matter, no payments were made before his retirement. Travis Air Force Base referred Sergeant Gianutsos' case to the Air Force Accounting and Finance Center (AFAFC), Denver, Colo., for resolution.

The AFAFC made a complete audit of Sergeant Gianutsos' pay account and leave record. This audit showed that—

(a) From the date of his enlistment in the Air Force, Sergeant Gianutsos' creditable service for pay purposes had erroneously included 216 days "lost time" during his Army service which is not creditable for pay. As a result, from October 24, 1951, through February 6, 1964, he received overpayments of basic pay and allowances totaling \$441.45.

(b) During his October 1961 to October 1965 enlistment, he accrued a maximum of 119 days leave and used 138 days leave. Since he used 19 days more leave than he earned, he owed the United States \$308.20 for excess leave.

(c) Pay and allowances due the member on date of retirement for a portion of the month of April 1966 totaled \$538.82.

(d) Indebtedness of \$749.65 resulted from overpayments of basic pay and allowances and payments for excess leave. The indebtedness was reduced to \$210.83, after applying the amount due Sergeant Gianutsos on date of retirement (\$538.82).

AFAFC provided Sergeant Gianutsos a full explanation of the results of the audit of his pay account. He was also advised that if he did not voluntarily make restitution of the indebtedness, it would be collected by monthly deduction from his retired pay. Sergeant Gianutsos protested the determination that his creditable service for pay had been erroneously computed although he did not deny that he had 216 days lost

time in the Army. He stated that he had used only 5 days more leave than he had earned. He contended he should be paid the entire amount due him on date of retirement less an amount equal to 5 days of leave. At his request, copies of his statement of service, pay records, and vouchers signed by him verifying he had used the leave as shown by the audit, were furnished to him. Collection had been suspended at the request of the sponsor of the bill pending consideration of the legislation.

The Department of the Air Force in its report to the committee on the bill specifically noted that the overpayments made to Sergeant Gianutsos were the result of administrative error. The Air Force also stated that there is no evidence of a lack of good faith on his part or on the part of administrative officials in connection with the overpayments which are referred to in the bill. The overpayments which resulted from erroneous computation by pay date based on prior Army service remained undeducted for a period of 14 years. The Air Force further noted that had he applied for remission prior to retirement under authority provided the service by law, it is probable that remission of that portion of the overpayment which occurred more than 6 years prior to the date the indebtedness was established would have been recommended.

In Sergeant Gianutsos' case, the amount that could have been remitted in this manner is \$390.65. The Air Force therefore stated that it would interpose no objection to the enactment of the bill if the amount of proposed relief were adjusted to be \$390.65. This amount represents the overpayment of active duty pay and allowances made to Sergeant Gianutsos in the period October 24, 1951, through June 24, 1960. The committee agrees that waiver in this instance should be limited to this figure and recommends that the amendment suggested by the Air Force be made to the bill and that the amended bill be considered favorably.

The committee after a review of all of the foregoing concurs in the action taken by the House of Representatives and recommends that the bill, H.R. 11890, be considered favorably.

Attached hereto and made a part hereof are the following: (1) a letter dated July 29, 1969, from the Department of the Air Force, and (2) a letter of June 29, 1967, from the Comptroller General of the United States.

DEPARTMENT OF THE AIR FORCE,  
Washington, D.C., July 29, 1969.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Air Force with respect to H.R. 9019, 90th Congress, a bill for the relief of T. Sgt. Peter Elias Gianutsos, U.S. Air Force (retired).

The purpose of H.R. 9019 is to relieve T. Sgt. Peter Elias Gianutsos, U.S. Air Force (retired) (AF 16065530), of liability for payment to

the United States of \$441.45. This amount represents overpayments of active duty pay and leave allowances received while he was a member of the Air Force in 1951 through 1964. The bill allows for credit in the accounts of any certifying or disbursing officer for amounts for which liability is relieved. It would also authorize the Secretary of the Treasury to pay to Sergeant Gianutsos any amount received or withheld from him because of the overpayments. Agent or attorney fees are limited to 10 percent of the amount appropriated in this act.

Sergeant Gianutsos served as an enlisted member in the Army from June 15, 1942, through October 7, 1948. He enlisted in the Air Force October 24, 1951, and served on continuous active duty until his retirement April 30, 1966. On retirement he had 20 years, 2 months, and 24 days of creditable service for pay purposes. He is currently entitled to retired pay at the rate of \$194.75 a month.

Early in 1965 Sergeant Gianutsos volunteered for duty in South Vietnam. During this tour of duty, on October 23, 1965, he extended his enlistment for 6 months. At that time, records available at his duty station indicated he had taken more leave than he had earned during the October 1961 to October 1965 enlistment. However, since the records were incomplete, collection for the excess leave was not effected.

Sergeant Gianutsos was retired from the Air Force at Travis Air Force Base, Calif. Immediately prior to his retirement, he applied at Travis Air Force Base for pay and allowances due him for April 1966. Records available at Travis Air Force Base also showed he had taken more leave than he had earned during his October 1961 to October 1965 enlistment. Sergeant Gianutsos did not agree with this determination and because Travis Air Force Base did not have sufficient information to resolve the matter, no payments were made before his retirement. Travis Air Force Base referred Sergeant Gianutsos' case to the Air Force Accounting and Finance Center (AFAFC), Denver, Colo., for resolution.

The AFAFC made a complete audit of Sergeant Gianutsos' pay account and leave record. This audit showed that:

(a) From the date of his enlistment in the Air Force, Sergeant Gianutsos' creditable service for pay purposes had erroneously included 216 days "lost time" during his Army service which is not creditable for pay. As a result, from October 24, 1951, through February 6, 1964, he received overpayments of basic pay and allowances totaling \$441.45.

(b) During his October 1961 to October 1965 enlistment, he accrued a maximum of 119 days leave and used 138 days leave. Since he used 19 days more leave than he earned, he owed the United States \$308.20 for excess leave.

(c) Pay and allowances due the member on date of retirement for a portion of the month of April 1966 totaled \$538.82.

(d) Indebtedness of \$749.65 resulted from overpayments of basic pay and allowances and payments for excess leave. The indebtedness was reduced to \$210.83, after applying the amount due Sergeant Gianutsos on date of retirement (\$538.82).

AFAFC provided Sergeant Gianutsos a full explanation of the results of the audit of his pay account. He was also



advised that if he did not voluntarily make restitution or the indebtedness, it would be collected by monthly deduction from his retired pay. Sergeant Gianutsos protested the determination that his creditable service for pay had been erroneously computed although he did not deny that he had 216 days lost time in the Army. He stated that he had used only 5 days more leave than he had earned. He contended he should be paid the entire amount due him on date of retirement less an amount equal to 5 days of leave. At his request, copies of his statement of service, pay records and vouchers signed by him verifying he had used the leave as shown by the audit, were furnished to him. Collection has been suspended at the request of Congressman Clancy.

The overpayments made to Sergeant Gianutsos were the result of administrative error. There is no evidence of a lack of good faith on his part or on the part of administrative officials. The erroneous pay computation date overpayments remained undetected for 14 years. Had he applied for remission prior to retirement, it is probable that remission of that portion of the overpayment which occurred more than 6 years prior to the date the indebtedness was established would have been recommended. In Sergeant Gianutsos' case this is \$390.65. Accordingly, the Air Force would interpose no objection to the enactment of H.R. 9019 if the amount of the proposed relief were reduced to \$390.65. This represents overpayment of active duty pay and allowances made to Sergeant Gianutsos during the period October 24, 1951, through June 24, 1960.

The Bureau of the Budget advises that, while there is no objection to the submission of this report, the Bureau would have no objection to relief from liability in cases where an overpayment was received in good faith and as the result of an administrative error on the part of Government officials.

Sincerely,

THOMAS H. NIELSEN,  
*Assistant Secretary of the Air Force.*

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COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., June 29, 1967.*

B-161496.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your letter of May 11, 1967, requesting our views on H.R. 9019, 90th Congress, a bill for the relief of T. Sgt. Peter Elias Gianutsos, U.S. Air Force, retired.

The bill in section 1 provides—

That Technical Sergeant Peter Elias Gianutsos, United States Air Force (retired) (AF16065530), of Cincinnati, Ohio, is relieved of liability to the United States in the amount of \$441.45, representing overpayments through administrative error of active duty pay and leave allowances as

a member of the U.S. Air Force in the years 1951 through 1964. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for amounts for which liability is relieved by this section.

Under section 2(a) of the bill the Secretary of the Treasury is authorized and directed to pay to Sergeant Gianutsos out of any money in the Treasury not otherwise appropriated "an amount equal to the aggregate of the amounts paid by him, or withheld from sums otherwise due him, with respect to the indebtedness to the United States specified in the first section of this Act."

Sergeant Gianutsos enlisted and entered on active duty in the Air Force on October 24, 1951. He had previously served in the Army during the period June 15, 1942, to October 7, 1948, inclusive. However due to time lost by him totaling 216 days while serving in the Army he had only a net total of 5 years, 8 months and 17 days of service creditable for longevity pay purposes upon his enlistment in the Air Force. Thus, for purposes of computing his active duty pay in the Air Force effective from October 24, 1951, his correct pay entry base date was February 7, 1946.

However, as a consequence of several different pay entry base dates established administratively from time to time, Sergeant Gianutsos is reported to have been overpaid a total of \$441.45 (the amount shown in H.R. 9019) representing erroneous longevity credits in his active duty pay during certain portions of his active service in the Air Force plus corresponding overpayments in computing his reenlistment bonuses and lump-sum leave payments in October 1955 and October 1961. The bill, H.R. 9019, is factually correct in stating that Sergeant Gianutsos is liable to the United States in the amount of \$441.45 by reason of longevity overpayments that were made to him due to administrative determinations of an incorrect pay entry base date.

The military pay records before us indicate that Sergeant Gianutsos is chargeable with 140 days leave of absence during the period of his enlistment in the Air Force commencing October 24, 1961, and ending October 23, 1965. During the period stated he accrued 119 days of leave (120 days less 1 day lost by reason of excess leave) and, therefore, he is chargeable with 21 days of excess leave. Our computation indicates that this amounts to \$340.50 which sum was overpaid him and now is due the United States.

Enclosed are copies of a letter dated November 21, 1951, from the Air Force Finance Center, Denver, Colo., addressed to the Claims Division of this Office certifying that Sgt. Peter E. Gianutsos is indebted to the United States in the amount of \$82.36 as a result of an administrative determination by the Secretary of the Air Force on account of loss of Government property. See title 31, United States Code, sections 89 to 92, inclusive. We have no record that this item of indebtedness has ever been liquidated by Sergeant Gianutsos.

The record before us further indicates that when retired on April 30, 1966, the net amount of \$220.35 was due and unpaid Sergeant Gianutsos. This amount represents all credit items due less all proper deductions including deduction for 5 additional days of excess leave conforming with the statement contained in his letter of May 5, 1966.

Summarized, Sergeant Gianutsos has been overpaid \$441.45 by reason of administrative error, \$340.50 due to the excess number of days of leave taken by him in his enlistment which terminated October 23, 1965, and \$82.36 on account of loss of Government property, a total indebtedness of \$864.31. The difference between \$864.31 and \$220.35; namely, \$643.96, represents the extent of Sergeant Gianutsos' net indebtedness to the United States of record at this time.

It would appear that the longevity overpayment sought to be covered by H.R. 9019 resulted from administrative error and that such overpayment probably was received by Sergeant Gianutsos in good faith and without being aware of any error. This does not appear to be the case with respect to the amounts he has received by reason of excess leave or with respect to the loss of Government property entrusted to him. In any event, we perceive no proper basis to allow him to retain any part of such money or to relieve him of liability for the value of the lost Government property.

Overpayments of pay occur from time to time and Congress has recognized the right of the Government and the duty of the accounting officers of the Government to recoup such overpayments directly from active or retired pay. See 5 U.S.C. 5514 and 31 U.S.C. 89 to 92, above referred to. It is our view that the cited statutory provisions were intended to have uniform application to all active and retired members of the uniformed services. A private relief bill such as H.R. 9019 tends to encourage others who are indebted to the United States to seek similar relief from liability to refund overpayments they have received without regard to applicable provisions of law. The question of whether Sergeant Gianutsos should be relieved of his indebtedness to the United States is, of course, a matter of policy for the Congress to decide.

We are not aware of any particular circumstances which would warrant passage of a private relief bill in favor of Sergeant Gianutsos. In this connection it seems pertinent to observe that many other members of the Armed Forces who have become indebted to the United States because of administrative error or otherwise have been required to refund such amounts. Accordingly, we do not favor enactment of H.R. 9019.

The record before us also indicates that in May 1967, Headquarters, U.S. Air Force, authorized suspension of collection action on Sergeant Gianutsos' indebtedness pending consideration by the Congress of relief legislation.

Sincerely yours,

FRANK H. WEITZEL,  
*Assistant Comptroller General of the United States.*

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